In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-733

LEWIS W. POE,
Petitioner,

vs.

PERCY D. MITCHELL, JR.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITIONER'S REPLY MEMORANDUM

LEWIS W. POE
3853-C Keanu Street
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Petitioner Pro Se

January, 1979

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For the record only, I object to the *untimely* filing, on January 8, 1979, of the Memorandum for the Respondent in Opposition (hereinafter referred to as the "Resp. Memo.").

No matter how the Respondent, wittingly or unwittingly, beclouds the issues, the principal legal questions concern the due process of law and the immunity of military physicians in the Executive Branch in light of the decisions in *Butz* v. *Economou*, ... U.S. ....., 98 S.Ct. 2894, 57 L.Ed.2d 895 (1978) and *Scheuer* v. *Rhodes*, 416 U.S. 232 (1974). In effect, the Sixth Circuit ruled that Respondent Mitchell was *absolutely* immune *if* he acted within the scope of his lawful duties. (Pet. App. A, p. A2)

In response to the Respondent's reference to and inclusion of the district court's dismissal order (Resp. Memo. App. A, 1a-3a), I am appending my complaint without

Exhibits (App. A, *infra*) which was filed on August 5, 1976 in Civil Action No. C-3-76-241, U. S. District Court at Dayton, Ohio, to refute erroneous and/or misleading information which is contained in the district court's dismissal order. The complaint clearly indicates that the Respondent acted *outside* the scope of his official duties.

Apparently, the Respondent is asking this Court to *blindly* apply the *Feres* doctrine, notwithstanding, or in full disregard of, the type of suit and the nature of the allegations in my complaint. The difficulty with the Respondent's contention is that the holding in *Feres* did *not* create an absolute personal immunity for military physicians from lawsuits, involving *unconstitutional* conduct and *intentional* torts arising under *both* federal and state law.

The Respondent appears to be saying that it doesn't matter at all how a serviceman was injured as long as he was a member of the armed forces at the time of injury. It doesn't matter *how* and *why* I was unlawfully hospitalized. It doesn't matter if I was unlawfully arrested and unconstitutionally confined in an Air Force psychiatric ward. It doesn't matter if there was no doctor-patient relationship between the Respondent and Poe. It doesn't matter if my constitutional right of privacy was violated. It doesn't matter if my right to informed consent was disregarded. It doesn't matter if psychotropic medication was forcibly injected into my body against my will and without my consent. It doesn't matter if Respondent knowingly published a false and fraudulent medical report concerning Poe's mental status. All that matters is that Poe was on "active duty"[1] in the Air Force, was injured

1. Poe's active duty" status *after* his unlawful and unconstitutional arrest and psychiatric confinement is in dispute. Poe was a prisoner without rights nor military standing. Neither was Poe serving a military function or mission. Nor was he under lawful military orders.

in an Air Force hospital, was "treated" by an Air Force physician, and was "diagnosed" as "mentally ill" by said Air Force physician. Thus,—Respondent reasons—"petitioner's claims against respondent clearly 'ar[ose] out of or [were] in the course of activity incident to service.'" (Resp. Memo. 3) We have reached the acme of absurdity. The *Feres* doctrine should not be blindly misapplied or misused.

Furthermore, please note that the Respondent has not challenged the facts which are presented in the "Statement of the Case." (Pet. 4-10)

Apparently, the Respondent wishes to rewrite the *Feres* doctrine by interjecting the proposition that *Feres* v. *United States,* 340 U.S. 135 (1950), "barr[ed] suits calling into question the decisions of military officers because of the debilitating effect they would have on discipline and readiness." (Resp. Memo. 2)

Feres did no such thing.[2] The *Feres* Court concluded that the *Government* was not liable *under* the Tort Claims Act for injuries to servicemen where the injuries arise out of or are in the course of activity incident to service.

When a military officer, such as the Respondent, not only commits medical fraud but violates his own regulation, such as paragraph 4-35 of Air Force Manual 168-4 (Pet. 3-4), he causes a greater "debilitating effect" on military discipline. Violation of regulations and fraud are not encouraged in the military—at least, not lawfully.

The Respondent's proposition that *Feres* barred suits calling into question the decisions of military officers says

2. "The only issue of law raised is whether the Tort Claims Act extends its remedy to one sustaining 'incident to the service' what under other circumstances would be an actionable wrong." *Feres* v. *United States,* 340 U.S. 135, 138 (1950).

far too much for it is tantamount to a unique variant of the doctrine of sovereign immunity. Ultimately, this proposition says that military personnel in the Executive Branch can do no wrong; that they should not be personally accountable nor liable for their actions, no matter how malicious, fraudulent, or egregious. If this were so, then military officials in the Executive Branch would be shielded by the doctrine of absolute immunity in all military situations *whereas* other federal officials in the Executive Branch would not be generally afforded the defense of absolute immunity for their constitutional transgressions. See *Butz, supra.*

If the decisions of military officers should not be questioned, then why is it Air Force policy to fully promulgate and encourage its employees to use the Inspector General Complaint System to air their grievances?

In *Butz, supra,* 98 S.Ct. at 2900, the United States on behalf of the petitioners asserted a similar proposition—

> that all of the federal officials sued were absolutely immune even if they infringed a person's constitutional rights and even if the violation was knowing and deliberate.

Naturally, the Supreme Court rejected such a claim. We know that not even the head of the Executive Branch, our Commander-In-Chief, is above the law. "No man in this country is so high that he is above the law." *Butz, supra,* 98 S.Ct. at 2910.

In *Bivens* v. *Six Unknown Named Agents,* 456 F.2d 1339 (2 Cir. 1972), the Second Circuit held that the agents were not absolutely immune and that the public interest was sufficiently protected by according the agents and their superiors a qualified immunity.

The Second Circuit realized that it would be incongruous and confusing to develop different standards of immunity for state officers sued under 42 U.S.C. § 1983 and federal officers sued on similar grounds under causes of action founded directly on the Constitution. The advantage of having *one* federal immunity doctrine for suits arising under federal law is self-evident.

Today, the Respondent pleads for *automatic,* absolute immunity. I think he is sufficiently protected by the doctrine of qualified immunity, *assuming he is entitled to that much.* The Respondent is not presumed to be immune from suit and must establish his right to immunity. See *Morgan* v. *Willingham,* 424 F.2d 200, 202 (10 Cir. 1970).

Circuit Judge Merritt, dissenting in *Granger* v. *Marek,* 583 F.2d 781, 787 (6 Cir. 1978), stated:

> "In most instances where the officer is acting in the line of duty * * *, the qualified immunity will protect him. The qualified immunity will protect the victim, however, in those instances when the officer, acting dishonestly or out of malice, abuses his authority."

Respondent asserted (Resp. Memo. 1-2) that the district court held that Poe could not recover for injuries *sustained incident to Poe's military service.* Please note that the district court *never* expressly concluded nor found that my injuries were sustained incident to my military service. Moreover, the Respondent was on active duty in the capacity of an Air Force Major, enjoying all the privileges, courtesies, benefits, respect, authority, and responsibilities of his rank and office as a commissioned officer. On the other hand, I was not, *in actuality,* on "active duty" *after* my illegal arrest and confinement be-

cause I enjoyed none of the privileges of my "rank" and "office" during my psychiatric confinement. In reality, I had no military standing, and my military, constitutional, and due process rights were *utterly disregarded.*

The Respondent (Resp. Memo. 2) and the Sixth Circuit (Pet. App. A, pp. A1-A2), in quoting *Feres,* 340 U.S. at 141, omitted an extremely important citation, i.e., *Dinsman* v. *Wilkes,* 12 How. [53 U.S.] 390 (1851).

The *Feres* Court recognized a significant difference between honest mistake or negligence and *intentional torts* committed by military personnel. The *Feres* Court specifically called attention to the case of *Dinsman* v. *Wilkes, supra, as to intentional torts.* In *Dinsman,* a marine was permitted to bring an action against his commanding officer, Captain Wilkes. See *Dinsman, supra,* at 402-403. This marine was certainly not barred by any absolute immunity doctrine. In *Dinsman, supra,* at 404, Chief Justice Taney stated that *if* Captain Wilkes acted honestly and from a sense of duty, then he was not liable for a mere error in judgment. However, Captain Wilkes was liable *if* he acted from a disposition to oppress, from malice, or from vindictiveness, and inflicted excess punishment. The question of fact for the jury to determine was whether Captain Wilkes acted from improper motives and abused the power confided to him to the injury of the plaintiff.

Hence, medical mistreatment, medical fraud, and intentional and unconstitutional conduct by the Respondent along with bad faith bear heavily on this case. At best, the Respondent *may* be entitled to a qualified immunity, but certainly no more.

The Respondent *incorrectly* stated (Resp. Memo. 2) that Poe had brought "a parallel action" in the District of Hawaii under the Federal Tort Claims Act. Not so.

Respondent Mitchell is nowhere mentioned in Hawaii Civil Action No. 76-0392.[3]

Respondent *erroneously* asserted (Resp. Memo. 2) that Poe contends that review is warranted because of a conflict among the circuits "on the question whether the *Feres* doctrine bars malpractice suits brought by servicemen under state law against military physicians."

First, the questions presented (Pet. 2) are not predicated on the *Feres* doctrine. They are predicated on the doctrine of official immunity and the due process of law. Second, this action is not a medical malpractice suit. There can be no medical malpractice herein simply because "there was no doctor-patient relationship between the defendant and the plaintiff." (Pet. 7) Third, both *federal* and *state* law are involved. This is an action in tort for injury sustained by Poe in the course of an unlawful and involuntary medical examination of Poe by the Respondent, acting under color of federal law in excess of his legal authority, for violation of Poe's constitutional right of privacy and for medical fraud perpetrated by the Respondent.

Respondent *incorrectly* asserted (Resp. Memo. 3) that "the disputed issue was squarely presented by the petition in *Martinez* v. *Schrock.*" Nothing could be further from the facts. In *Martinez* v. *Schrock,* 537 F.2d 765 (3 Cir. 1976), cert. denied, 430 U.S. 920 (1977), it was an established fact that the two Army surgeons were acting *within* the scope of their official duties while performing an operation on a *consenting, retired* Army sergeant and civilian employee at Fort Dix. In the instant case, the Respondent acted *beyond* the scope of his legal authority.

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3. See Petition for Certiorari No. 78-589, *Poe* v. *United States,* which is still pending before this Court because Mr. Brook Hart of Honolulu filed a Petition for Rehearing on January 4, 1979.

See district court complaint (App. A, *infra*). Moreover the courts below erroneously *assumed* that Respondent was acting in good faith and within the scope of his lawful duties—without giving me an opportunity to challenge the facts *assumed* therein. Unlike *Martinez, supra,* this action is not founded on medical malpractice, and it involves *both* state and federal law. In short these two cases are distinguishable and so are the issues.

Justice White, dissenting from the denial of certiorari in No. 76-530, aptly stated:

> "nowhere has it been suggested that there is a judicially created unqualified immunity for Government functionaries operating at respondents' level. * * * the District of Columbia Circuit held that an Army medical officer was not entitled to absolute immunity from suit. *Henderson* v. *Bluemink,* 167 U.S. App. D.C. 161, 511 F.2d 399 (1974). Hence, there is a square conflict * * *." *Martinez* v. *Schrock,* 430 U.S. 920, 921-922 (1977).

The Respondent claimed (Resp. Memo. 3) that enactment of 10 U.S.C. § 1089(a) decreases the importance of the issue. It is not true in cases like the instant one because 10 U.S.C. § 1089(a) applies to medical malpractice; § 1089 does not apply here because Respondent acted outside his scope; and § 1089 is not retroactive.

Respondent *incorrectly* asserted (Resp. Memo. 3) that:

> "Petitioner also urges (Pet. 10-16) that the courts below erred in concluding that the *Feres* doctrine is applicable * * *."

Petitioner's urgings (Pet. 10-16) are a matter of record and concern the Reasons for Granting the Writ. I never once used the word "Feres" nor the phrase "Feres doctrine" in my *entire* Petition for Certiorari No. 78-733. That ought to indicate that the Questions Presented (Pet. 2) herein are concerned fundamentally with issues other than the *Feres* doctrine.[4]

Respondent asserted (Resp. Memo. 3) that Poe's claims against him clearly arose out of or were in the course of activity incident to Poe's service. Nonsense. In light of the *undisputed* Statement of the Case (Pet. 4-10), *if* these events[5] and constitutional transgressions by the Respondent are deemed "incident to Poe's military service," then the meaning of "incident to service" proves far too much and ultimately becomes meaningless. No one will be able to distinguish between what is and what is not "incident to one's service." Presto, if one is in active federal service, then all military activity can be labeled "incident to one's military service." Furthermore, "incident to one's military service" is a question of fact—to be determined by the offering of evidence in a fair tribunal.

The Respondent urges (Resp. Memo. 3) this Court to continue to deny certiorari because of a previous denial of certiorari on December 11, 1978 in *Poe* v. *United States,* No. 78-589. That fact is not dispositive in this case. Would the Respondent argue that had this Court granted certiorari in No. 78-589, it should then do the same here? Of course not.

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4. However, Pet. for Cert. No. 78-589 did concern the applicability of the *Feres* doctrine.

5. Since Poe's arrest and psychiatric confinement were illegal, all subsequent involuntary examinations, forcibly administered "treatment," and medical "documentation" by the Respondent are legally suspect at the very least.

CONCLUSION

I was illegally arrested and confined without medical cause therefor. My person was subjected to the devastating effects of drugs—unconstitutionally administered, forcibly injected. I cannot undo what has already been done to me, but I may be able to prevent it from happening to others in the future—with the help of this Court.

In light of the undisputed allegations in the complaint (App. A, *infra*), to be foreclosed from offering evidence in support of my claims by a grant of *absolute* personal immunity to a military physician *in the complete absence of* a showing that said military physician was in fact acting within the scope of his lawful duty appears to be inconsistent with the recent decision in *Butz* v. *Economou*, ... U.S. ....., 98 S.Ct. 2894 (1978) and our traditional concepts of official immunity.

Respectfully submitted,

LEWIS W. POE
Petitioner Pro Se

January, 1979

APPENDIX A

IN THE
UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF OHIO,
WESTERN DIVISION

Civil Action No. C-3-76-241

LEWIS W. POE,
Plaintiff,

vs.

PERCY D. MITCHELL, JR.,
as a private individual,
Defendant.

COMPLAINT

TO UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT, OHIO, WESTERN DIVISION, DAYTON:

Plaintiff [also herein referred to as "Capt Poe" or "Poe"] alleges as follows:

JURISDICTION

1. Jurisdiction is founded on diversity of citizenship and amount in controversy exceeds, exclusive of interest and costs, the sum or value of $10,000.00. Plaintiff is a resident and citizen of the State of Hawaii while the defendant is a resident of the State of Ohio or a State other than the State of Hawaii.

2. The acts upon which this complaint is founded were performed at or near Wright-Patterson USAF Medi-

cal Center, Ohio. Plaintiff has suffered within and outside the State of Ohio.

INTRODUCTION AND BACKGROUND INFORMATION

3. This is an action in tort for damages for personal and/or bodily injury sustained by plaintiff in the course of an unlawful and involuntary medical examination of the plaintiff by defendant PERCY D. MITCHELL, JR. Plaintiff seeks to recover compensatory and punitive damages for injury to his person and reputation and for losses incident thereto, including at least $1,547.60 for special medical expenses. Furthermore, this cause of action is brought for relief on the basis of actual or constructive fraud and for invasion of privacy and bodily integrity.

4. On May 29, 1974, Capt Lewis W. Poe, plaintiff herein, was employed by the United States Air Force as a Regular Captain on active duty at Dover AFB, Delaware. On that date, Poe was unlawfully arrested by several members of the Dover AFB Security Police. See Exhibit 34. *Under duress and coercion,* Poe was unlawfully transported across several State lines and was involuntarily and totally confined in Psychiatric Ward 4 West at Wright-Patterson USAF Medical Center, Ohio, on May 31, 1974.

5. From the time of Poe's arrest, the Air Force or its agents has/have forced Poe to submit to psychiatric examination under the *guise* of a legitimate "inpatient evaluation." The ulterior motive of this "examination" was to discredit Poe, to destroy his credibility, and to separate Poe from the Air Force because of Poes' grave allegations/charges against hospital personnel and command authority at Dover AFB, Delaware.

6. While it was within his power, Poe constantly refused to be examined by USAF medical personnel. At

all times material to this action, Poe has never consented to any treatment except for dental care of his tooth and x-rays of his injured neck in June of 1974 while confined at Wright-Patterson USAF Medical Center. Plaintiff was *never* a patient—only an involuntarily confined *resident* in a psycho ward. In early-to-mid June of 1974, USAF medical personnel, including defendant Mitchell, took it upon themselves *to force drug treatment* upon Poe for no justifiable *medical* reason. *This* forced treatment upon Poe was *not* for his direct benefit because there was nothing medically nor emotionally wrong with Poe, but was apparently employed as an effective or expedient "behavior modifying" device, used at the call and whim of said USAF medical personnel to assert their authority over the plaintiff. Moreover, no doctor-patient relationship actually existed between defendant Mitchell (nor any other Air Force psychiatrist) and the plaintiff.

7. The personal injury of the plaintiff was incident to the unlawful and involuntary *examination* of Poe *and* the false and fraudulent psychiatric report (Exhibit 36) which was dictated, authorized, signed, and/or published by defendant Mitchell on or about June 27, 1974.

8. On September 4, 1974, Poe was relieved from active military duty (see Exhibit 38) and retired for a *non-existent* disability—in effect, an insidious cover-up of an extensive and sordid mess which had its beginnings at Dover AFB, Delaware, and which transcends this particular cause of action.

SUMMARY OF FACTS

9. At all times material to this action, defendant Doctor/Major PERCY D. MITCHELL, JR., was a USAF psychiatrist at Wright-Patterson USAF Medical Center in the employ of the Air Force. Defendant Mitchell acted under color of federal law *in excess of* his lawful authority,

or, if within the scope of his official medical duties or medical position, he acted in an arbitrary, intentionally reckless, wanton, collusive, knowingly fraudulent, and/or unconstitutional manner such that he effectively departed from his official duty whereby his acts became his own personal acts.

10. On December 6, 1973, a week *after Capt Poe* had filed his second Inspector General complaint *against* hospital personnel and command authority at Dover AFB, the Dover AFB Hospital Commander wrote in a document, dated 6 Dec 73 (whose contents were made known to the Wing Inspector General):

> "If there is a question regarding the quality of Captain Poe's performance and constructive use of time, consideration may be made in the matter of discharge through administrative channels IWA [sic] AFM 36-2/36-3."

11. On December 11, 1973, that same Hospital Commander maliciously wrote in paragraph 3 of his 11 December 1973 letter to Colonel Kuyk (the Wing Commander), Subject: Lewis Poe, Captain, USAF, 576-28-7043:

> "I feel that there is definitely a question regarding the quality of Captain Poe's performance and constructive use of time and consideration may be made in the matter of discharge through administrative channels IAW AFM 36-2/36-3. It would appear to me that the time and mental investment he has put into his letters and complaints over the past several months must have adversely affected his performance of duty and would constitute criteria to discharge him administratively. . ."

12. In February 1974, three months *prior* to Poe's unlawful arrest, seven people wrote letters of recommendation (Exhibits 20, 21, 22, 22.1, 22.2, 22.3, and 22.4) to the University of Hawaii School of Law on behalf of Capt Poe, bearing witness to his good character, reputation, and mental soundness.

13. On April 5, 1974, an Air Force psychiatrist at Dover AFB said to plaintiff:

> "I believe they're trying to discharge you."

14. On April 16, 1974, the Base Commander at Dover AFB said to plaintiff:

> "The deck is stacked against you. They've given in all they're going to, especially the hospital. You can't win."

15. On May 28, 1974, Poe was unlawfully ordered to report to the Dover AFB Hospital. On that same day, the Hospital Commander wrote on Standard Form 502, Narrative Summary, dated 28 May 74:

> "(Dr. Mitchell, Wright-Patterson USAF Hospital, has agreed to accept the patient for inpatient evaluation.)"

16. On May 29, 1974, Poe was unlawfully arrested at Dover AFB by several AF Security Policemen. See Exhibit 34.

17. On May 31, 1974, Poe was unlawfully, involuntarily, and totally confined in Psychiatric Ward 4 West, Wright-Patterson USAF Medical Center, Ohio.

18. On June 4, 1974, Poe refused to take a 10-mg pill of Librium which was prescribed by Major/Dr. Jerome Young for no justifiable medical reason.

19. On June 6, 1974, Poe, after refusing for two days to take said pill, asked Dr Young, a USAF psychiatrist, why said pill was prescribed. Dr Young responded by tell-

ing a nurse, "Increase that to 50 mg of Thorazine." Poe calmly stated that he refuses to take that too whereupon Dr Mitchell spontaneously intervened, saying "If he refuses, inject it." Thus, on June 6, 1974, plaintiff received the initial, *forced injection* against his will, without his consent, and over his verbal protest in clear contravention of sound medical principles. The effect of said injection was overwhelming. Poe believes he passed out sitting on a chair and was taken or escorted to his assigned bed.

20. On June 7, 1974, three hospital personnel attempted to give Poe a second injection for his refusal to take a pill. A struggle ensued, and Poe's neck was injured in this struggle. [Poe continues to suffer intermittently from this neck injury.] Poe received a forced injection into his left upper arm. Poe was again in a "Chemical Strait-jacket" and terrifyingly realized that he was in a "survival situation."

21. On or about June 13, 1974, defendant Mitchell increased the daily dosage of Thorazine from 400 mg to 600 mg. Poe observed increased skin pigmentation on his forehead above both eyes. [After two years, residual pigmentation traces on plaintiff's forehead still exist.]

22. On or about mid-June 1974, defendant Mitchell told Poe that he has been receiving a lot of phone calls from high ranking people on Poe's case. Defendant Mitchell told Poe that these people would begin, "Dr Mitchell, I don't mean to put any pressure on you but," to which Poe responded, "I hope they can't pressure you." Defendant Mitchell replied with assurance, "They can't."

23. On June 17, 1974, defendant Mitchell discontinued the "noon medication." On June 18, 1974, defendant Mitchell discontinued all medication. Poe complained of twitching under his heart to Nurse/Captain Nina Baer.

24. On June 20, 1974, defendant Mitchell told Poe that Poe was an "s-1" (meaning no psychiatric disorder) and that Poe did not have a paranoid personality disorder. *This* diagnosis was correct.

25. On or about June 21, 1974, defendant Mitchell signed, or authorized the signing of, AF Form 569 (Exhibit 35), authorizing Poe's initial release and a 3-day-pass from the hospital.

26. On or about June 26, 1974, defendant Mitchell prescribed a daily dosage of 200 mg of Thorazine for no medically justifiable reason. Defendant Mitchell, against Poe's will and over his verbal protest, injected 50 mg of Thorazine into Poe's buttocks for Poe's refusal to take the prescribed medication. Not only was the forced treatment unlawful, but defendant Mitchell maliciously, wilfully, recklessly, or negligently failed to exercise due care and diligence and failed to render proper care to meet the *actual* needs (if any) of the plaintiff, that is, defendant Mitchell forced and rendered improper and unreasonable care upon the plaintiff in spite of the fact that there was no doctor-patient relationship between defendant Mitchell and Capt Poe.

27. On June 27, 1974, defendant Mitchell dictated a detailed narrative summary (Exhibit 36) into plaintiff's medical records.

28. Said dictated narrative summary was false, defamatory, and fraudulent. For example, on the third page of Exhibit 36, defendant Mitchell dictated/wrote, knowing it to be false:

> ". . . the patient was placed on Thorazine reaching 600 mg. per day. At that level he became a much warmer affectively and . . . individual. He looked so very well on the medication . . ."

29. For example, on the third page of Exhibit 36, defendant Mitchell dictated/wrote, again knowing it to be false:

> "As a test the patient was then taken off of medication completely. Within a five day period thereafter he appeared slightly worse than his admission presentation, similar guardedness, suspiciousness, inability to cooperate with anyone other than the downtrodden usually minority patients who were most severely sick."

30. For example, on the fourth page of Exhibit 36, defendant Mitchell dictated/wrote, again knowing it to be false:

> "DIAGNOSIS: Schizophrenia, paranoid type, chronic, severe; . . . ." [See Exhibit 36 for the remainder of this passage.]

31. For example, on the fourth page of Exhibit 36, defendant Mitchell dictated/wrote, again knowing it to be false:

> ". . . this patient looks quite well on medication and . . . can appear close to normal when on no medications. He is nevertheless an extremely sick individual and needs the attention of a medical facility.
>
> /s/ Percy D. Mitchell Jr."

32. On June 27, 1974, *defendant Mitchell,* by his own personal acts or in collusion with or wrongful encouragement from others, such as Dr/Colonel Scibetta (head of the psychiatric services at Wright-Patterson USAF Medical Center), *maliciously, knowingly, wilfully, recklessly, fraudulently, and in disregard of the foreseeable consequences of his acts,* dictated, authorized, signed and/or published in bad faith a false and defamatory, four-page

medical document (Exhibit 36) which served as the basis of a USAF Medical Board's finding that Poe was "70 per cent mentally disabled," and hence unfit for military duty.

33. Said medical document operated prejudicially on plaintiff's right to a good name, reputation, honor *and personal safety,* and constituted an invasion of plaintiff's right to gainful employment, his civilian and military careers and the pursuit of happiness.

34. On or about June 28, 1974, defendant Mitchell signed, or authorized the signing of AF Form 569 (Exhibit 35A), authorizing Poe's second three-day pass from the hospital in spite of the fact that defendant Mitchell had just dictated, inter alia, on June 27, 1974, that Poe "is nevertheless an extremely sick individual and needs the attention of a medical facility."

35. Plaintiff was never a chronic, severe, paranoid schizophrenic. Plaintiff was never paranoid nor schizophrenic. See Exhibits 22.5 (affidavit of Lt Sharon J. Sees) and Exhibit 22.6 (affidavit of SSgt Richard E. Deal).

36. On or about July 29, 1974, plaintiff discovered the gross fraud and defamation of his character which were perpetrated by at least defendant Mitchell.

37. On July 30, 1974, a USAF psychiatrist at Wright-Patterson Medical Center said to Poe, "Your case has gotten bigger and bigger and bigger. It would take an Act of God to correct."

38. On August 10 and 17, 1974, Poe underwent a psychiatric evaluation (unbeknown to the Air Force hospital staff) by a civilian psychiatrist, who has subsequently documented in a report which was sent directly to an attorney:

> "Diagnostic Impression: Compulsive Personality."

39. On August 39, 1974, Poe was admitted to psychiatric Ward 54B of VA Hospital, Palo Alto, California and discharged therefrom on September 6, 1974. See Exhibit 39.

40. On September 4, 1974, Poe was officially separated from the Air Force for a non-existent disability.

41. On September 8, 1974, at Poe's own request, Poe was admitted to a psychiatric facility under the supervision of a civilian psychiatrist to further evaluate Poe and to conduct a "600-mg Thorazine" experiment because of the false and fraudulent documentation by defendant Mitchell. This report was sent directly to an attorney, and it stated:

> "When he [Poe] took the 100 and 200 mg TID, he was drowsy and his gait was a little wobbly and he fell asleep often during the day. . . . The last two days of medication, his speech became slurred; he was having serious difficulties concentrating, staggered when he walked, . . .
>
> . . . there are no sighs [sic] of paranoid thinking or signs of psychosis evident. His associations were not loose, there were never signs of tangential thinking. . . .
>
> Mr. Poe will be discharged on September 20, 1974, and he can go back to work right away."

42. *Thus, at the very minimum, defendant Mitchell,* acting under color of federal law *in excess of* his lawful authority [or, if within the scope of his official and professional medical duty, acting in an arbitrary, intentionally unprofessional, malicious, reckless, collusive, knowingly fraudulent and/or unconstitutional manner] *and in the absence* of a doctor-patient relationship, *wrongfully,* tortiously, maliciously, knowingly, fraudulently, in bad faith

and/or in reckless disregard of the foreseeable consequences of his alleged personal acts, *caused* personal and bodily injury to the plaintiff.

SOME INJURIES TO PLAINTIFF

43. As a result, plaintiff has suffered injury and damage to his honor, reputation, and integrity as a person and as a commissioned officer in the USAF; injury, interruption, damage to his professional military career, including loss of job, loss of present and future income, loss of his expected property interest in his Air Force retirement equity; destruction of professional and personal relationships; injury to his body; severe mental distress, humiliation, frustration, and anguish; invasion of privacy and the pervasive disruption of his life.

PRAYER FOR RELIEF

WHEREFORE, plaintiff demands judgment against the defendant in the sum of $1,547 in special damages, $2,000,000 in compensatory damages and $2,000,000 in punitive damages; for plaintiff's costs, attorneys' fees and services incurred herein; and for such equitable or other relief as may be just, necessary, and proper.

Respectfully submitted,

/s/ Lewis W. Poe
Lewis W. Poe Plaintiff Pro Se
3853-C Keanu St.
Honolulu, HI 96816
[phone: (808) 734-6327]

DATED: August 2, 1976
at Honolulu, Hawaii.

TRIAL BY JURY REQUESTED

Plaintiff requests a trial by jury in this action.